

WASHINGTON TIMES  
25 February 1985

FILE

DOROTHY RABINOWITZ

# After the Westmoreland trial was over

## No contrition from CBS

Not since the Supreme Court ruling permitting *The New York Times* to print stolen classified documents (otherwise known as the Pentagon Papers) have we heard so much about the ennobling work and high mission of journalism as we heard from CBS this week after the conclusion of the Westmoreland suit.

The journalism which had, in particular, evoked these tributes was — no one will be surprised to learn — the very documentary which caused the Westmoreland suit to be brought in the first place.

Who will not always cherish the memory of Van Gordon Sauter, executive vice president of CBS, standing before the cameras to declare before the world that CBS made no apology for its program; that — notwithstanding all the evidence of the trial — the documentary in question was "fair" as well as truthful?

Mr. Sauter was referring here, of course, to the same documentary which CBS's own investigators — who produced the Benjamin Report — censured for having "coddled" witnesses who supported the producer's thesis, and for having, above all, excluded from the final product nearly all witnesses whose testimony ran counter to that thesis.

Who was not tempted to recall, watching this, the performance of *Time* magazine's representatives, managing editor Ray Cave and editor-in-chief Henry A. Grunwald — dignitaries incapable, even after *Time* had been found guilty of maligning Gen. Ariel Sharon and misrepresenting truths, of uttering anything resembling an apology.

In the outcome of the Westmoreland case, of course, CBS had some reason for celebration — unlike *Time* after its calamitous encounter with Gen. Sharon. The network had been required to yield neither apology nor money to the plaintiff.

Jurors were appearing before TV cameras hither and yon to say they had been "leaning" toward CBS — though those appearances occurred with nothing like the frequency with

which Mr. Sauter came before the cameras to explain, in ever more elaborate detail, the high motives and keen sense of responsibility by whose lights CBS had been guided throughout this affair.

Take, for example, the reason for CBS's decision that Gen. Westmoreland be allowed to end his suit, of which we learned in the course of Mr. Sauter's appearance on CBS's "Nightwatch." Until this moment it could, of course, have occurred to no one in his right senses to suppose that a party having so much at stake in an outcome as CBS would not leap to accept an offer to end a libel action — and on such terms.

After all, not long ago CBS insiders were exchanging with one another the story, a true one, of the network's high executive who woke up one morning in a state of rapture over a dream which he wistfully described as the happiest he had had in years: Gen. Westmoreland had telephoned to announce that he had suddenly decided to call off the suit.

But now, from Mr. Sauter, we were to learn that CBS had, in fact, denied its own "instincts" to "go the whole route," and "had accepted the general's withdrawal" — a sacrifice made, we were informed, out of concern for the greater good of journalism.

Would CBS have, his interviewer asked, changed the program in any way, given hindsight?

It would not, came the prompt answer. And as we had by now heard innumerable times, each with no less fascination than the last, we heard again that the documentary was "fair" and honest.

And with the magnanimity of which we had been given testimony here, we learned in addition of the modesty of which the network had shown such sterling evidence in this week of its triumph.

For, as Mr. Sauter informed us further: "We have not gone about talking of a victory" — an assertion which will doubtless evoke in viewers of

this week's evening news (replete with ebullient pronouncements from CBS spokesmen) the same credulity as claims that the documentary was "fair."

No one, of course, can deny the victory that indeed fell to CBS with the sudden end of the Westmoreland suit. But neither should anyone believe that the trial was without value — or that it ended without disastrous cost to the reputation of CBS.

For without the Westmoreland challenge there would have been no internal investigation of CBS's practices in the production of this documentary. Nor would we have known anything of the Benjamin Report.

If not for the trial, would anyone — other than those involved in the program's production — have known that there had been witnesses favorable to Gen. Westmoreland — witnesses whose testimony the producers chose to omit from the final product?

Indeed, if CBS had encompassed in that documentary anything like the balanced spectrum of witnesses paraded these last months before a jury, there would have been no need for a libel trial. This, of course, brings us to one of the more instructive lessons to be gleaned from this affair — namely that, for certain public figures, to attain a fair hearing at the hands of television requires a libel action costing millions.

We do not know, in the end, the combination of concerns that moved Gen. Westmoreland to end his suit, thus leaving the verdict forever uncertain.

For, whatever we may hear now of the jury's "leanings," it is by no means certain they were destined to side, in the end, with CBS.

Nor should we underestimate, as we listen now to talk of their "leanings" toward CBS, the frustration of jury members suddenly bereft of their function (and its accompanying status).

Here was the act of judgment for which they had so long prepared, the fruition of which they were now to be cheated, thanks to Gen. Westmoreland's decision to pull out — a decision likely to induce in jurors a certain animosity, easily translated now into a conviction in a great many of them that they intended to hold with CBS all along.

Of the general himself we are unlikely now ever to know, or need to, more than we do now.

To this knowledge we may add that, at the trial's end, the general was moved to make an altogether conventional gesture of conciliation — the kind which gentlemen sometimes make, after losing battles, by way of preserving some shard of authority.

So it was that Gen. Westmoreland announced that he and Mike Wallace were both "victims of circumstances" — a statement to which Mr. Wallace gave, of course, the gallant reply that he didn't "feel a liaison" with the general as a victim of circumstances.

In all, an exchange of no great consequence — except perhaps for the gesture which produced it: one which testifies that, now at least, if never before in his career, the general was incapable of grasping the nature of the enemy.

---

*Dorothy Rabinowitz is a nationally syndicated columnist.*